

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,

Plaintiff,

v.

POLAR INDUSTRIES, INC.

Defendant.

Civil Action No. 3:11-cv-00915 (MRK)

CONSENT DECREE

TABLE OF CONTENTS

I.	JURISDICTION AND VENUE	3
II.	APPLICABILITY	4
III.	DEFINITIONS	5
IV.	CIVIL PENALTY	7
V.	COMPLIANCE REQUIREMENTS	8
VI.	REPORTING REQUIREMENTS	14
VII.	STIPULATED PENALTIES	17
VIII.	FORCE MAJEURE	19
IX.	DISPUTE RESOLUTION	21
X.	EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS	24
XI.	NOTICES	25
XII.	COSTS	26
XIII.	MODIFICATION	27
XIV.	INTEGRATION	27
XV.	SIGNATORIES/SERVICE	28
XVI.	PUBLIC PARTICIPATION	28
XVII.	TERMINATION	29
XVIII.	RETENTION OF JURISDICTION	30
XIX.	FINAL JUDGMENT	30
	APPENDIX I: REQUIREMENTS FOR AIR SOURCE EMISSION TESTING	34

WHEREAS, Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed contemporaneously with the lodging of this Consent Decree a Complaint in this action ("Complaint") against Defendant, Polar Industries, Inc. ("Polar"), alleging that Polar has committed various violations of New Source Review ("NSR") and Title V permit requirements of the Clean Air Act ("CAA"), 42 U.S.C. § 7401, et seq., at Polar's block foam molding manufacturing facility located at 32 Gramar Avenue in Prospect, Connecticut;

WHEREAS, Plaintiff and Defendant (together, "the Parties"), without the necessity of trial regarding any issue of fact or law, and without any admission of liability by Defendant, consent to entry of this Consent Decree;

WHEREAS, the Parties agree, and the Court finds, that settlement of this action without adjudication or admission of facts or law is in the public interest and that entry of this Consent Decree without further litigation is an appropriate resolution of the claims alleged in the Complaint;

THEREFORE, it is adjudged, ordered and decreed as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the subject matter of this action and over the Parties to this Consent Decree pursuant to Section 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345 and 1355.

2. Venue properly lies in this district pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. § 1395(a), because Defendant is located in the district, and

because the violations alleged in the Complaint occurred there. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree and over Defendant, and consents to venue in this judicial district.

3. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief can be granted against Defendant pursuant to Section 113 of the CAA, 42 U.S.C. § 7413.

4. The United States has notified the State of Connecticut of the commencement of this action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

II. APPLICABILITY

5. The provisions of this Consent Decree shall apply to and be binding upon the United States on behalf of the EPA, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

6. At least thirty (30) days prior to any transfer of ownership or operation of Defendant's manufacturing facility, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with the proposed transfer agreement, to the United States in accordance with Section XI below. Any attempt to transfer ownership or operation of Defendant's facility without complying with this Paragraph constitutes a violation of this Decree. No such transfer, whether in compliance with this Paragraph or otherwise, shall relieve Defendant of its obligations under this Consent Decree unless:

- (a) the transferee agrees in writing to undertake the obligations required by this Consent Decree with respect to the facility, and to intervene as a Defendant in this action for the purpose of being bound by the applicable terms of the Decree;
- (b) the transferee provides EPA with information sufficient to demonstrate that the transferee has the technical and financial means to comply with the applicable obligations of the Decree; and
- (c) EPA consents in writing to substitute the transferee for Defendant with respect to such obligations.

7. Defendant shall provide a true copy of this Consent Decree to all officers, managers, supervisors, and agents whose duties might reasonably include compliance with any provision of this Decree. Defendant shall also provide a copy of the Decree to any contractor retained to perform work required under this Consent Decree, and shall condition any such contract upon performance of the work in conformity with the terms of the Decree.

8. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

9. Terms used in this Consent Decree that are defined in the CAA or in regulations promulgated pursuant to the CAA shall have the meanings assigned to them in the CAA or such regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- (a) "Consent Decree" or "Decree" shall mean this document and all attachments and appendices hereto;
- (b) "Day" shall mean a calendar day, unless otherwise specified;

- (c) "Effective Date" shall be the date upon with this Consent Decree is entered by the Court or a motion to enter the Decree is granted, whichever occurs first, as recorded on the Court's docket;
- (d) "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;
- (e) "EPS" shall mean expandable polystyrene;
- (f) "EPS beads" shall mean expandable polystyrene beads used to manufacturer EPS foam products;
- (g) "Manufacturing emissions" shall mean all VOC emissions that occur during every step of the processing of an EPS foam product from the delivery of raw material until the storage of the final product;
- (h) "Paragraph," when followed by an Arabic numeral, shall mean the corresponding paragraph of this Consent Decree;
- (i) "Parties" shall mean the United States on behalf of EPA, and Polar;
- (j) "Post-manufacturing emissions" or "storage emissions" shall mean VOC emissions that occur for a maximum of 48 hours after an EPS foam product is manufactured;
- (k) "Raw material" shall mean all polystyrene beads, polyurethane, and blowing agent used in the manufacture of EPS foam products;
- (l) "Section," when followed by a Roman numeral, shall mean the corresponding section of this Consent Decree;
- (m) "United States" shall mean the United States of America, acting on behalf of EPA; and
- (n) "VOCs" shall mean volatile organic compounds.

IV. CIVIL PENALTY

10. Defendant shall pay a civil penalty of \$102,000, plus applicable interest, on the following schedule: by no later than thirty (30) days after this Consent Decree's Effective Date, Defendant shall pay \$68,340, and by no later than one hundred eighty (180) days after the Effective Date, Defendant shall pay \$33,660, plus interest at the rate specified in 28 U.S.C. § 1961, from the Effective Date through the date of payment.

11. Defendant shall make the above-described civil penalty payment by FedWire Electronic Funds Transfer ("EFT") in accordance with written instructions to be provided to Defendant by the U.S. Department of Justice or the U.S. Attorneys Office for the District of Connecticut. At the time of payment, Defendant shall provide written notice of the payment via mail to the United States in accordance with Section XI below. The notice shall contain a copy of the EFT transaction record, together with a transmittal letter that shall state that the payment is for the case's civil penalty, reference the case's civil docket number and U.S. Department of Justice case number (90-5-2-1-09881), and explain the calculation of any interest included in the payment. Defendant shall also provide this same written notice by e-mail to acctsreceivable.CINWD@epa.gov, and by mail to the U.S. Environmental Protection Agency, Fine and Penalties, Cincinnati Finance Center, P.O. Box 979077, St. Louis, MO, 63197-9000.

12. Defendant certifies that it shall not use any payment made pursuant to this Section, or any payments made pursuant to Section VII, in any way as, or in furtherance of, a tax deduction for Defendant, or for any of its officers or corporate affiliates, under federal, state or local law. Defendant specifically waives any confidentiality rights it has with respect to its

federal tax returns and return information under 26 U.S.C. § 6103, and on any state or local tax returns, as to the United States for the purpose of ensuring the accuracy of this certification.

V. COMPLIANCE REQUIREMENTS

A. VOC Emission Limit

13. By no later than March 31, 2012, Defendant shall ensure that its facility's manufacturing and post-manufacturing VOC emissions are no greater than 2.4 pounds of VOCs per 100 pounds of EPS beads processed.

B. VOC Control System Installation and Operation

14. Defendant shall purchase, install and operate a VOC Control System to control VOC emissions from Defendant's manufacturing operations at its facility as required by this Consent Decree. The VOC Control System shall include a regenerative thermal oxidizer ("RTO"), a negative-pressure enclosure around the pre-puff aging room, a negative-pressure enclosure around other controlled storage areas (e.g., the hot room), and all ductwork, hoods and/or other equipment necessary to capture and vent Defendant's manufacturing emissions to the RTO for VOC destruction. The design, purchase, installation and operation of the VOC Control System shall occur in accordance with the schedules and requirements set out below.

1. Design, Purchase and Installation Schedule

15. By no later than June 30, 2011, Defendant shall complete the design for the VOC Control System, and shall select and order an RTO. The VOC Control System design shall include all elements of the emissions capture system, including the enclosure of the pre-puff aging room and other controlled storage areas (e.g., the hot room) and the maintenance of

negative air pressure within them. Defendant's progress report for the quarter ending in March 2011 shall include a written description of the VOC Control System detailing each of the elements set out above, including the selected RTO, the design for the pre-puff aging room and hot room enclosures, and the design and equipment planned for capturing manufacturing emissions from each of the pre-expansion and molding machines.

16. By no later than January 31, 2012, the RTO shall be delivered to the facility.

17. By no later than March 31, 2012, Defendant shall install and commence full operation of the VOC Control System.

18. Defendant shall conduct performance testing of the VOC Control System in accordance with the requirements and schedules set out in Section V.C and Appendix I of this Consent Decree.

2. Operational Requirements

19. Defendant shall limit the pentane content of the EPS beads used in its foam manufacturing processes to a percentage pentane by weight that enables Defendant to comply with its VOC emission limit set out in Section V.A as demonstrated by the performance testing required by Section V.C.

20. Notwithstanding the EPS bead pentane percentage limit set out above, Defendant may use EPS beads with a higher percentage pentane by weight provided that foam blocks made from these beads are stored in the facility's enclosed controlled storage areas, and Defendant is able to demonstrate compliance with its VOC emission limit using this additional storage through the results of its required performance testing and core sampling of residual pentane

following such storage in product manufactured from bead containing pentane at such percentage, together with any additional testing if required by EPA or air permitting authority.

21. At all times during the pre-expansion, aging, and molding of EPS beads and EPS foam products, Defendant shall continuously operate its manufacturing facility's RTO at a set point temperature for which the RTO maintains a VOC destruction efficiency of at least 98%. The RTO operating temperature shall be continuously monitored and recorded in order to ensure that the set point temperature is continuously maintained.

22. At all times during the opening of EPS bead containers, the pre-expansion, aging, and molding of EPS beads into foam blocks, and any storage of foam blocks in the facility's enclosed controlled storage areas, Defendant's manufacturing emissions shall be vented to the RTO in a manner that shall ensure compliance with the VOC emission limit set forth in Section V.A of this Consent Decree. At no time shall any pre-expansion or molding machines be disconnected from any ductwork or other VOC capture equipment that vents VOC emissions from these machines to the RTO at any time while such machines are being used in Defendant's manufacturing processes. Further, at no time shall the pre-puff aging room or the hot room be disconnected from any ductwork or other equipment that vents VOC emissions from the hot room and pre-puff aging room to the RTO at any time while these rooms are being used to capture and control VOC emissions.

C. VOC Control System Performance Testing

23. Defendant shall conduct performance testing, using a mass-balance approach, on its new VOC Control System as required by this Consent Decree. The performance testing required by this Consent Decree shall be conducted in accordance with a written protocol approved by EPA on the schedule set out below.

24. No later than the date of the start up and operation of the VOC Control System, Defendant shall prepare and provide to EPA a draft written pre-test protocol that contains all testing, monitoring, sampling and analytical procedures for the test. The draft protocol shall contain all pre-test information required by Appendix I.

25. Within 60 days after the receipt of the draft pre-test protocol, EPA shall approve or comment on it. During this 60-day period, Defendant and EPA may hold a conference call or face-to-face meeting to discuss the draft protocol. If EPA does not provide comments within this 60-day period, the draft protocol shall be deemed approved by EPA. If EPA comments on the draft protocol, or on any revised protocol, Defendant shall incorporate EPA's comments and re-submit a revised protocol to EPA within 15 days of receiving the comments. EPA shall approve or comment on the revised protocol within 30 days after receiving it.

26. Within 60 days after EPA's approval of the pre-test protocol, Defendant shall schedule and conduct the VOC Control System performance test in accordance with the approved protocols. The test schedule shall be coordinated with EPA so that EPA may chose, in its discretion, to observe any or all aspects of the test.

27. Within 30 days after completing the VOC Control System performance test, Defendant shall submit a complete test report to EPA. The test report shall contain all information required for such reports by Appendix I.

28. Nothing in this Section or Appendix I shall prohibit EPA from revising the schedule set out above to allow Defendant's VOC Control System testing to take place in coordination with any performance testing required by the Connecticut Department of Environmental Protection ("DEP") as part of any state air permitting process required by this Decree. Prior to such revision, EPA shall consult with Connecticut DEP and Defendant, and EPA shall provide Defendant with the final revised schedule in writing.

D. Permits

29. Defendant shall apply for and obtain federally-enforceable state air permit(s) from the Connecticut DEP that shall include requirements and limitations at least as stringent as the requirements and limitations contained in this Consent Decree relating to VOC emissions control at Defendant's manufacturing facility. Defendant's application(s) shall be made within one hundred eighty (180) days of the Decree's Effective Date, and shall comply with all applicable requirements set forth in permitting regulations administered by Connecticut DEP. If Connecticut DEP should request or require additional information related to the application(s), Defendant shall supply the information within any deadlines set by DEP.

E. Mitigation Demonstration

30. For the two-year period after Defendant successfully completes all VOC Control System performance testing required pursuant to this Consent Decree (or for an earlier two-year

period if agreed to in writing by the parties), Defendant shall determine and compare the difference between the facility's total actual VOC emissions and the facility's total VOC emissions if the facility had consistently emitted VOCs at the limit set out in Section V.A. The difference between these two emissions figures is the facility's "VOC Emissions Differential."

31. Defendant shall determine its VOC Emissions Differential in accordance with a methodology approved by EPA. No later than 60 days prior to the end of the above-described two-year period, Defendant shall provide to EPA a proposed methodology for calculating its VOC Emissions Differential. Within 60 days of receipt of the proposed methodology, EPA shall either approve or comment on it. If EPA does not provide comments within this 60-day period, the proposed methodology shall be deemed approved by EPA. If EPA comments on the proposed methodology, or upon any revised methodology, Defendant shall incorporate EPA's comments and submit a revised methodology to EPA within 30 days after receiving the comments. EPA shall approve or comment on the revised methodology within 30 days after receiving it.

32. No later than 60 days after EPA approves the methodology, Defendant shall determine its VOC Emissions Differential in accordance with such methodology and shall provide EPA with a written report stating the calculated VOC Emissions Differential and summarizing the calculations and data upon which the differential was based. If the VOC Emissions Differential is less than 14 tons of VOCs, the report shall also contain a proposed plan for the purchase and permanent retirement of discrete VOC or NO_x emission reduction credits ("ERCs") required below. EPA shall approve or comment on Defendant's proposed or any

revised plan for ERC purchase and retirement (“purchase/retirement plan”) in accordance with the time frames set out in Paragraph 31.

33. If Defendant’s VOC Emissions Differential for the two-year period is less than 14 tons of VOC, Defendant shall purchase and permanently retire discrete VOC or NOx ERCs in an amount, measured to the nearest ton, equal to the difference between the VOC Emissions Differential and 14 tons. The ERCs shall originate from emissions sources in Massachusetts, Connecticut, Rhode Island or New York, and shall be ozone-season ERCs if available. The ERCs’ purchase and permanent retirement shall be completed no later than 60 days after EPA’s approval of Defendant’s purchase/retirement plan submitted pursuant to this Section. Defendant shall provide EPA with a final written report regarding the ERCs’ purchase and retirement no later than 90 days after EPA’s approval of the plan.

VI. REPORTING REQUIREMENTS

A. General Reporting Provisions

34. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by any federal, state, or local law, regulation, permit, or other requirement.

35. Any information provided by Defendant pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

36. All reports and other written information required by this Consent Decree to be sent by Defendant to the United States shall contain the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments to it, and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gathered and presented the information contained therein. I further certify, based on personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing and willful submission of a materially false statement.

37. Defendant shall ensure that such certified statement is signed by a responsible corporate officer, such as a president, vice-president, secretary, treasurer, senior manager responsible for environmental policy-making and decision-making, or other person responsible for a principal business function.

B. Quarterly Progress Reports

38. Each calendar quarter, Defendant shall provide to EPA a progress report regarding the compliance actions Defendant is required to undertake pursuant to Sections V.B through V.D of this Consent Decree. The reports shall be due within fifteen (15) days after the end of each calendar quarter, that is, by January 15th, April 15th, July 15th and October 15th. Defendant shall provide its first progress report for the calendar quarter ending in June 2011, unless Defendant and EPA agree in writing to alter this date.

39. Each progress report shall contain:

(a) a summary of Defendant's progress regarding the VOC Control System, performance testing, and the federally-enforceable state air permit application(s) and approval(s) from the Connecticut DEP, during the quarter;

- (b) a detailed description of the activities undertaken to design, purchase and install the VOC Control System, and activities undertaken to apply for and obtain the required federally-enforceable state air permit(s), during the quarter, with specific reference to any implementation deadlines occurring in the quarter;
- (c) an explanation of any difficulties or delays regarding the VOC Control System, performance testing, or permit application(s) or approval(s), during the quarter;
- (d) a summary, with copies of supporting documentation, of the costs expended on the VOC Control System and any performance testing that occurred during the quarter; and
- (e) a description of Defendant's progress in obtaining a permit or permits from Connecticut DEP during the quarter.

Defendant shall continue to provide these progress reports until Defendant completes the compliance actions required pursuant to Sections V.B through V.D of the Decree.

C. Emission Mitigation Reports

40. In accordance with Paragraph 32, Defendant shall provide to EPA a written report stating the facility's VOC Emissions Differential over the relevant two-year period, together with a summary of the calculations and data upon which the differential was based. If Defendant is required to purchase and permanently retire any VOC or NOx ERCs, Defendant shall subsequently provide to EPA a final written report, in accordance with Paragraph 33, that describes the ERCs' purchase and retirement and that contains the following information:

- (a) the type and cost of ERCs purchased;
- (b) the state, and location if known, from which the ERCs were purchased;
- (c) the identification numbers for the ERCs; and
- (d) documentation that clearly demonstrates that the ERCs were purchased and are now no longer valid or available for use.

VII. STIPULATED PENALTIES

41. Except as otherwise provided in this Consent Decree, Defendant shall be liable for stipulated penalties as set forth below in this Section.

42. Late Payment of Civil Penalty: If Defendant fails to timely pay any amount of the civil penalty set out in Section IV, Defendant shall be liable for the unpaid amount and for any interest or other charges as provided in Section IV, and for stipulated penalties as follows:

<u>Days of Failure to Pay</u>	<u>Penalty Per Day</u>
1 to 30 days	\$ 1,000
31 days and beyond	\$ 2,000

43. Failure to Comply with VOC Emission Limit: If Defendant violates the VOC emission limit set forth in Section V.A, Defendant shall be liable for stipulated penalties of \$5,000 per day for each such violation.

44. Failure to Perform Other Compliance Measures: If Defendant fails to perform any of the requirements set out in Sections V.B through V.E, and in Appendix I, Defendant shall be liable for stipulated penalties for each violation of each such requirement, as follows:

<u>Days of Failure to Perform</u>	<u>Penalty Per Day</u>
1 to 30 days	\$ 1,000
31 to 60 days	\$ 2,500
61 days and beyond	\$ 5,000

45. Failure to Provide Reports: If Defendant fails to timely provide any information required pursuant to Section VI, Defendant shall be liable for stipulated penalties as follows:

<u>Days of Failure to Provide Information</u>	<u>Penalty Per Day</u>
1 to 60 days	\$ 500
61 to 120 days	\$ 1,000
121 days and beyond	\$ 2,500

46. Stipulated penalties arising under this Section shall begin to accrue on the day that the violation of this Consent Decree first occurs, and shall continue to accrue for each day until the day upon which the violation is fully corrected. Separate stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree. Stipulated penalties shall accrue regardless of whether the United States has notified Defendant that a violation of this Consent Decree has occurred.

47. Stipulated penalties shall become due and owing, and shall be paid by Defendant, not later than thirty (30) days after the United States issues Defendant a written demand for them. If any demanded stipulated penalties are not paid in full when due, Defendant shall pay the unpaid penalties and interest thereon. Such interest shall accrue from the date the penalties were due, and shall be calculated in accordance with 28 U.S.C. § 1961.

48. The United States, in an unreviewable exercise of its discretion, may reduce or waive stipulated penalties otherwise due it under this Consent Decree.

49. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the written notices required by Paragraph 11, except that the transmittal letter shall state that the payment is for stipulated penalties and shall specify the violation(s) and the dates for which the penalties are being paid.

50. Stipulated penalties shall continue to accrue as provided in Paragraph 46 above during any dispute resolution for stipulated penalties, with interest on accrued penalties payable and calculated in accordance with 28 U.S.C. § 1961, but need not be paid until the following:

(a) If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay all accrued penalties determined to be owing, together with interest, to the United States within thirty (30) days of the effective date of the agreement or the receipt of EPA's decision;

(b) If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) days of receiving the Court's decision or order, except as provided in Subparagraph (c), below;

(c) If any Party appeals the Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) days of receiving the final appellate court decision.

51. The stipulated penalty provisions of this Section shall be in addition to all other rights reserved by the United States pursuant to Section X below. Nothing in this Section shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek other remedies or sanctions available by virtue of any violation by Defendant of this Consent Decree or of the statutes, regulations or permits referenced within it.

VIII. FORCE MAJEURE

52. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes entirely beyond the control of Defendant, or any entity controlled by Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation of this Consent Decree subject to stipulated penalties despite Defendant's best efforts to perform the obligation. "Best efforts" include using best efforts to anticipate any potential force majeure event and to address the effects of any such event (a) as it is occurring, and (b) after it has occurred, such that the nonperformance is minimized to the greatest extent possible. Force majeure does not include Defendant's financial inability to perform the obligations of this Consent Decree. Stipulated penalties shall not be due for the number of days of nonperformance

caused by a force majeure event as defined in this Paragraph, provided that Defendant complies with the terms of this Section.

53. If any event occurs which causes or may cause nonperformance of any obligation of this Consent Decree subject to stipulated penalties, whether or not caused by a force majeure event, Defendant shall provide written notice to EPA as soon as possible, but not later than seven (7) days after the time Defendant first knew of the event, or by the exercise of due diligence should have known of the event. The notice shall describe the noncompliance or expected nonperformance, including its causes and expected duration; describe the measures taken and to be taken by Defendant to prevent or minimize the nonperformance or expected nonperformance; provide a schedule for carrying out those actions; and state Defendant's rationale for attributing any nonperformance or expected nonperformance to a force majeure event. Failure to provide timely and complete notice in accordance with this Paragraph shall preclude Defendant from asserting any claim of force majeure with respect to the event in question.

54. If EPA agrees that nonperformance or potential nonperformance of an obligation of this Consent Decree is attributable to force majeure, EPA will notify Defendant of its agreement and the length of the extension granted to perform the obligation. Stipulated penalties shall not accrue with respect to such obligation during the extension provided by EPA for performance. An extension of time to perform the obligation affected by a force majeure event shall not, by itself, extend the time to perform any other obligation under this Consent Decree.

55. If EPA does not agree that a force majeure event has occurred or does not agree to the extension of time sought by Defendant, EPA will notify Defendant in writing of EPA's position, which shall be binding unless Defendant invokes dispute resolution under Section IX below no later than fifteen (15) days after receipt of EPA's written notice. In any such dispute, Defendant shall bear the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event as defined by this Section; that Defendant provided the written notice required by Paragraph 53; that the force majeure event caused any nonperformance Defendant claims was attributable to that event; and that Defendant exercised its best efforts to prevent or minimize any nonperformance caused by the event.

IX. DISPUTE RESOLUTION

56. Unless otherwise provided in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, such procedures shall not apply to actions by the United States to enforce obligations of Defendant that have not been disputed in accordance with this Section.

57. Informal Dispute Resolution: Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when either Defendant or EPA provides written notice describing the nature of the dispute and requesting informal negotiations to resolve it. The period of informal negotiations shall not exceed twenty (20) days beyond the date that EPA or Defendant receives the above-described written notice unless EPA and Defendant agree in writing to a longer period. If the parties cannot resolve a dispute by informal negotiations, then the position

advanced by EPA shall be considered binding unless, within fifteen (15) days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

58. Formal Dispute Resolution: Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by providing written notice to the United States containing a statement of position regarding the matter in dispute. The statement of position shall include, but may not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

59. The United States shall provide written notice containing its own statement of position to Defendant within forty-five (45) days of receipt of Defendant's statement of position. The United States' statement of position shall include, but may not be limited to, any factual data, analysis, or opinion supporting that position and all supporting documents relied upon by the United States. The United States' statement of position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

60. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XI, a motion requesting judicial resolution of the dispute. The motion must be filed within ten (10) days of receipt of the United States' statement of position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion or documentation, and shall set forth the relief requested and any

schedule within which the dispute must be resolved for orderly implementation of the Consent Decree. Defendant's motion to the Court shall not raise new issues or submit new facts that were not previously presented to the United States during formal dispute resolution.

61. The United States shall respond to Defendant's motion within the time period provided in the local rules of the Court, unless the parties stipulate otherwise. Defendant may file a reply memorandum to the extent permitted by the local rules or the parties' stipulation, as applicable.

62. In any judicial proceeding pursuant to this Section's formal dispute resolution procedures, Defendant shall bear the burden of demonstrating that its position clearly complies with, and furthers the objectives of, this Consent Decree and the CAA, and that Defendant is entitled to relief under applicable law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

63. The invocation of dispute resolution procedures under this Section shall not extend, postpone, or affect any obligation of Defendant under this Consent Decree not directly in dispute, unless the final resolution of the dispute so dictates. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of nonperformance, but payment shall be stayed pending resolution of the dispute as provided in this Section. If Defendant does

not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII above.

64. The assessment of stipulated penalties pursuant to Paragraph 42 regarding Defendant's failure to timely pay its civil penalty shall not be subject to dispute resolution under this Section. For such assessments, the United States' determination regarding the lateness of the civil penalty and any stipulated penalties assessed as a result shall be unreviewable and final.

X. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

65. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging of this Consent Decree. This Consent Decree does not limit any rights or remedies available to the United States for any criminal violations.

66. Except as expressly provided in this Section, this Consent Decree shall not be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the CAA, any regulations or permits issued pursuant to the CAA, or any other federal or state laws, regulations, or permits.

67. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations, and in no way relieves Defendant of its responsibility to comply with all applicable federal, state, and local permits, laws and regulations. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any provision of this Consent Decree relating to the design,

purchase, installation, operation or testing of the VOC Control System will result in compliance with the provisions of the CAA, with any regulations or permits issued thereunder, or with the VOC emission limit contained in Paragraph 13 of this Decree.

68. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties not party to this Consent Decree, nor does it limit the rights of third parties not party to this Consent Decree against Defendant, except as otherwise provided by law.

69. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

70. Except as expressly provided in this Consent Decree, the United States reserves all legal and equitable remedies available to enforce the provisions of the Decree. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health, welfare or the environment arising at or posed by any of Defendant's facilities, whether related to the violations addressed in this Consent Decree or otherwise.

XI. NOTICES

71. Unless otherwise specified herein, whenever written notifications, information or reports are required by this Consent Decree, it shall be sent to the individuals and addresses specified below:

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Attn: Jerome W. MacLaughlin
jerry.maclaughlin@usdoj.gov

Steven J. Viggiani
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
Mail code OES04-3
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912
viggiani.steven@epa.gov

As to Defendant:

Brian C. Feeman, Esq.
Robinson & Cole, LLP
280 Trumbull Street
Hartford, Connecticut 06103-3597
bfreeman@rc.com

David Lewis
President
Polar Industries, Inc.
32 Grammar Avenue
Prospect, Connecticut 06712
dlewis@polarcentral.com

72. Each party may, by written notice to the other party, change its designated notice recipient or notice address provided above.

XII. COSTS

73. Each party shall bear its own costs, disbursements and attorneys' fees in this action, and specifically waives any right to recover such costs, disbursements or attorney's fees

from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law. However, the United States shall be entitled to collect its costs, disbursements and costs for the time of technical personnel and attorneys incurred in any action necessary to collect any outstanding penalties due under this Consent Decree or to otherwise enforce the Decree.

XIII. MODIFICATION

74. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by the Parties. Where the modification constitutes a material change to any term of this Consent Decree, it shall be effective only upon approval by the Court.

75. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX, provided, however, that instead of the burden of proof provided by Paragraph 62, the party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XIV. INTEGRATION

76. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XV. SIGNATORIES/SERVICE

77. Each party certifies that at least one of its undersigned representatives is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

78. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

79. Defendant agrees to accept service of process by mail with respect to all matters arising under this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable local rules of this Court including, but not limited to, service of a summons. Defendant agrees that the following agent is authorized to accept the above-described service of process on Defendant's behalf:

Brian C. Feeman, Esq.
Robinson & Cole, LLP
280 Trumbull Street
Hartford, Connecticut 06103-3597
bfreeman@rc.com

Defendant shall notify the United States as specified in Section XI above of any change in the identity or address of Defendant, its agent for service, or its counsel.

XVI. PUBLIC PARTICIPATION

80. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if, upon consideration of any comments received regarding the Consent Decree, the United States concludes that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of the Consent

Decree without further notice or proceedings. Defendant agrees not to withdraw from or oppose the entry of the Decree or to challenge any of the Decree's provisions, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

81. If, for any reason, this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of either party, and the terms of the agreement may not be used as evidence in any litigation between the parties.

XVII. TERMINATION

82. Defendant may provide the United States with a written request for termination of this Consent Decree after Defendant has (a) completed the requirements of Sections V.B through V.E, and Appendix I, of this Consent Decree, (b) demonstrated that the permit(s) obtained pursuant to Section V.D include requirements and limitations at least as stringent as those contained in this Consent Decree relating to VOC emissions control at Defendant's manufacturing facility, (c) maintained compliance with Section V.A of this Consent Decree for a period of two (2) years at any time after the Decree's Effective Date, and (d) paid the civil penalty and any stipulated penalties required by this Consent Decree. The request for termination shall state that Defendant has satisfied the above requirements, and shall include any necessary supporting documentation.

83. Following receipt by the United States of Defendant's request for termination, the Parties shall confer informally concerning the request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Consent

Decree.

84. If the United States does not agree that the Consent Decree may be terminated, Defendant may invoke dispute resolution under Section IX above. However, Defendant shall not seek such dispute resolution until at least sixty (60) days after service of its request for termination.

XVIII. RETENTION OF JURISDICTION

85. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, or effectuating or enforcing compliance with the terms of this Decree.

XIX. FINAL JUDGMENT

86. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant.

Judgment is hereby entered in accordance with the foregoing Consent Decree this 28th day of July 2011.


/s/ Mark R. Kravitz
UNITED STATES DISTRICT JUDGE

UNITED STATES V. POLAR INDUSTRIES CONSENT DECREE

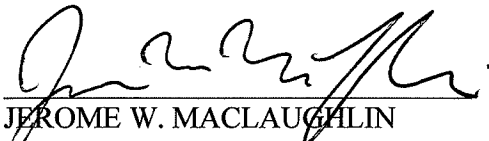
For Plaintiff, UNITED STATES OF AMERICA:

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

By:


ELLEN MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

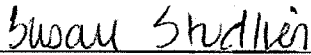
6/6/11
Date


JEROME W. MACLAUGHLIN
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

6/6/11
Date


UNITED STATES V. POLAR INDUSTRIES CONSENT DECREE

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:



SUSAN STUDLIEN
Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency,
Region I
Mail Code OES04-5
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

05/20/11
Date

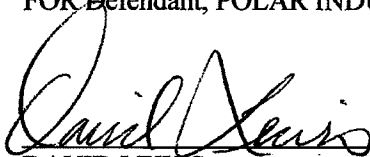


STEVEN J. VIGGIANI
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency,
Region I
Mail Code OES04-3
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

5/19/11
Date

UNITED STATES V. POLAR INDUSTRIES CONSENT DECREE

FOR Defendant, POLAR INDUSTRIES, INC.

A handwritten signature in cursive script, appearing to read "David Lewis", is written over a horizontal line.

DAVID LEWIS

President

Polar Industries, Inc.

32 Grammar Avenue

Prospect, Connecticut 06712

4-14-11
Date

APPENDIX I – REQUIREMENTS FOR AIR SOURCE EMISSION TESTING

REQUIREMENTS FOR AIR SOURCE EMISSION TESTING

A. PRETEST INFORMATION REQUIREMENTS

In order to establish uniform requirements and help ensure that proper test methods and procedures are utilized, the information specified below must be submitted to EPA Region 1 in the form of a test protocol. EPA will notify the company of any deficiencies or required changes in the test protocol. Following such notification, the company shall revise and resubmit the test protocol for EPA review and approval.

Except as otherwise provided by EPA, the test protocol shall provide for testing in strict accordance with applicable procedures in 40 C.F.R. Part 60, Appendix A, Standards of Performance for New Stationary Sources, or in 40 C.F.R. Part 61, Appendix B, National Emission Standards for Hazardous Air Pollutants. Any variations in sampling or analytical procedures must be indicated in the test protocol and receive written approval from EPA prior to testing.

The test protocol shall provide the following information, at a minimum:

1. Identification and a brief description of the source to be tested. The description shall include:

- a. Type of industrial process or combustion facility;
- b. Type and quantity of raw and finished materials used in the process;
- c. Description of any cyclical or batch operations which would tend to produce variable emissions with time;
- d. Basic operating parameters used to regulate the process; and
- e. Rated capacity of the process.

2. A brief description of the air pollution control equipment associated with the process, including:

- a. Type of control device;
- b. Operating parameters;

- c. Rated capacity and efficiency; and
 - d. Ultimate disposal of wastes.
3. Type of pollutant to be sampled (particulate matter, NO_x, SO₂, hydrocarbons, etc.).
 4. A description of the emission sampling equipment, including a schematic diagram of the sampling train.
 5. A description of the sampling and analysis procedures. Reference standard methods, if applicable. Indicate any proposed variations and provide justification.
 6. A sketch with dimensions indicating the flow of exhaust gases from the process, through the control equipment and associated ductwork to the stack.
 7. In accordance with 40 C.F.R. Part 60, Appendix A, Method 1:
 - a. An elevation view of the dimensions of the stack configuration indicating the location of the sampling ports and distances to the nearest upstream and downstream flow interferences; and
 - b. A cross-sectional sketch of the stack at the sampling location with dimensions indicating the location of the sampling traverse points.
 8. Estimated flue gas conditions at sampling location, including temperature, moisture content, and velocity pressure.
 9. A description of the process and control equipment operating data to be collected during the sampling period.
 10. Copies of the field data sheet forms to be used during the tests.
 11. Names and titles of personnel who will be performing the tests.
 12. A description of the procedures for maintaining the integrity of the samples collected, including chain of custody and quality control procedures.
 13. Calibration sheets for the dry gas meter, orifice meter, pilot tube, and/or any other equipment that requires calibration.
 14. A list of pre-weighed filters to be used during particulate emission testing, including identification and tare weights.

(Item Nos. 13 and 14 must be submitted prior to actual testing, but need not be included with the pretest information.)

B. EMISSION TEST REPORT REQUIREMENTS

The emission test report must contain all pertinent data concerning the tests, including a description of the process and operating conditions under which the tests were made, the results of the tests, and test procedures. While the exact format of the report will vary depending upon the type and objective of the tests, below is a suggested format containing elements that must be incorporated in the report.

1. Introduction

- a. Identification, location, and dates of tests;
- b. Purpose of tests;
- c. Brief description of source; and
- d. Name and affiliation of person in charge of tests.

2. Summary of results

- a. Operating and emission data; and
- b. Comparison with applicable emission regulations.

3. Source description

- a. Description of process including operation of emission control equipment;
- b. Flow sheet (if applicable);
- c. Type and quantity of raw and finished materials processed during the tests;
- d. Maximum normal rated capacity of the process; and
- e. Description of process instrumentation monitored during the test.

4. Sampling and analytical procedures

- a. Description of sampling train and field procedures;
- b. Description of recovery and analytical procedures;

- c. Sketch indicating sampling port locations relative to process, control equipment upstream and downstream flow disturbances; and
- d. Sketch or cross-sectional view of stack indicating traverse point locations.

5. Test results and discussion

- a. Detailed tabulation of results including process operating conditions and flue gases conditions;
- b. Discussion of significance of results relative to operating parameters and emission regulations; and
- c. Discussion of any divergences from normal sampling procedures or operating conditions that could have affected the test results.

6. Calculation and data reduction methods

- a. Description of computational methods, including the equation format used to obtain final emissions results from field data; and
- b. Sample calculations from at least one run of each type of test performed.

7. Appendix

- a. Copies of all field data collected during the test, including sampling data sheets and process operating logs;
- b. Copies of all analytical laboratory data;
- c. Calculation sheets or computer input and output data;
- d. Sampling equipment and laboratory calibration data;
- e. Names and titles of personnel and organizations participating in the tests;
- f. Visible emission observations performed during the tests (if required); and
- g. Copies of all chain of custody information.